

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN L. RUSH,

Defendant.

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CRIMINAL NO. 01-40033-GPM-05

MEMORANDUM AND ORDER

MURPHY, District Judge:

Before the Court is Defendant Brian L. Rush's motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 181). The Court appointed counsel to represent Mr. Rush on his motion, and counsel has now moved to withdraw as attorney and for a "no merits" statement (Doc. 185). *See Anders v. California*, 386 U.S. 738, 744 (1967). Mr. Rush has not responded to counsel's motion.

The Court has fully considered Mr. Rush's motion for reduction and counsel's motion to withdraw. As was the case when Mr. Rush moved for relief pursuant to § 3582(c)(2) in 2008, Mr. Rush is not eligible for a reduction of sentence (Doc. 177). A defendant urging a sentence reduction under § 3582(c)(2) must show: (1) the Sentencing Commission has lowered the applicable guideline sentencing range; and (2) that the reduction is consistent with applicable policy statements issued by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). If the guideline amendment has not lowered the defendant's applicable guideline sentencing range, then the Court has no subject matter jurisdiction to consider the reduction request. *United States v. Lawrence*, 535 F.3d 631, 637-38 (7th

Cir. 2008); *see United States v. Forman*, 553 F.3d 585, 588 (7th Cir.), *cert. denied sub nom McKnight v. United States*, 129 S.Ct. 1924 (2009). Such is the case here—Mr. Rush was sentenced based on his base offense level as a “career offender” under U.S.S.G. § 4B1.1, not on the basis of the relevant drug conduct guidelines. The Sentencing Commission’s amendments “leave the career-offender guideline unchanged.” *United States v. Griffin*, 652 F.3d 793, 803 (7th Cir. 2011). Accordingly, Mr. Rush is not eligible for a § 3582(c)(2) reduction. Counsel’s motion to withdraw and for a “no merit” statement (Doc. 185) is thus **GRANTED** and Mr. Rush’s motion for reduction of sentence pursuant to 18 U.S.C. § 3582 (Doc. 181) is **DENIED**.

IT IS SO ORDERED.

DATED: January 12, 2012

s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge